

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

SENATE COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on April 25, 2003 at 2 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Bill Tash, Chairman (R)
Sen. Sherm Anderson (R)
Sen. Aubyn Curtiss, Vice Chairman (R)
Sen. Jon Ellingson (D)
Sen. Rick Laible (R)
Sen. Dan McGee (R)
Sen. Gary L. Perry (R)
Sen. Glenn Roush (D)
Sen. Debbie Shea (D)
Sen. Ken Toole (D)

Members Excused: Sen. Gregory D. Barkus (R)
Sen. Bea McCarthy (D)

Members Absent: None.

Staff Present: Rosana Skelton, Committee Secretary
Krista Lee Evans, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. No tape recording was made.

Committee Business Summary:

Hearing & Date Posted: HJR 45, 4/22/2003
Executive Action: HJR 45 - Concurred

HEARING ON HJR 45

Sponsor: Representative Veronica Small-Eastman, HD 6, Lodge Grass

Proponents: SENATOR GERALD PEASE, D) SD 3

David Milligan, EPA Director, Northern Cheyenne Tribe
Joe Lamsen, Communications Director, Office of Public
Instruction, for Director Linda McCulloch

Opponents: SENATOR KEITH BALES, SD 1, Otter

Will Duffield, MT Association of Oil, Gas and Coal
Counties

Informational Testimony: None.

Opening Statement by Sponsor: Representative Veronica Small-Eastman, HD 6, Lodge Grass, introduced HJR 45, a bill urging the Montana Congressional Delegation to actively pursue enactment of Federal Legislation that it promised the Northern Cheyenne Tribe it would endeavor to obtain following the signing of the Otter Creek Settlement Agreement. She explained that the resolution was brought because no action has been taken by the federal government on the Otter Creek settlement. Promises have been made, and they need to be kept.

Proponents' Testimony:

SENATOR GERALD PEASE, SD 3, hoped that the legislature would support the resolution, as the Land Board had promised certain actions when it approved the Crown Butte swap.

David Milligan, EPA director for the Northern Cheyenne Tribe, stated he had been working with Will Brooke in Senator Conrad Burns' office, and they had asked for impact money from the federal government to deal with the impacts to the reservation resulting from the development of the coal deposits. He emphasized four points:

1. The impact money will be needed.
2. The Tribe will use the money for planning and maintenance of public services.
3. HB 409 allows inventories and assessments of cultural resources as well as mineral resources.
4. 8½ sections of mineral rights (subsurface rights) will be traded to the tribe.

Joe Lamsen, Communication Director, OPI, represented Director Linda McCulloch, stating that he had helped draft the original agreement between the Land Board and the Tribe, and the development of the Otter Creek Tracts could result in an increase

to the school trust account by \$33M. Superintendent McCulloch strongly supports the agreement.

Opponent's Testimony:

SENATOR KEITH BALES, SD 1, Otter, represented the District where the Otter Creek Tracts are located. He objected to the resolution for the following reasons:

1. Page 1, Line 20-23 of the resolution states that these tracts are located within three miles of the Tongue River, and that is not true.
2. Page 2, Line 18 & 19 states that the Legislature supports the Otter Creek Settlement Agreement. He was not aware of any decision by the Legislature either for or against the settlement, and therefore did not think the statement was true.
3. The Otter Creek Tracts do not lie within the Northern Cheyenne Reservation, and the county where these tracts are located (Powder River County), was not mentioned in the agreement the Land Board passed on a narrow 3-2 vote.
4. Development plans included bonding authority to provide for the infrastructure needs.
5. The mine site will be off the reservation. The townsite will be off the reservation.
6. Highway 212 has just been rebuilt across the reservation by the Montana Dept of Transportation, and all county roads are now built and maintained by the MDT.
7. Most impacts will be off the reservation. This resolution gives the Tribe the impact money, although most impacts are off the reservation.
8. This Legislation would be ill-advised.

Will Duffield, MT Association of Oil, Gas and Coal Counties, told the committee that his association had written the Land Board opposing the Otter Creek Settlement Agreement when they made it. He opposes the Legislature endorsing the agreement.

INFORMATIONAL WITNESSES: None

Questions from Committee Members and Responses:

SENATOR JON ELLINGSON asked **Will Duffield** if he'd seen the agreement. He replied that he only knew what he'd read in the newspaper. **SENATOR ELLINGSON** thinks terms of legally binding agreement must be supported, whether everyone agrees with it or not.

SENATOR ELLINGSON asked **SENATOR BALES** if he was familiar with the legal principle called, "recision." The Tribe gave up their claim and their rights, he averred, for the state to receive the Otter Creek Tracts, based on the settlement agreement.

SENATOR DAN MCGEE asked **Mr. Duffield** the basis of opposition to the agreement. He answered that the Powder River County Commissioners were working hard on the issue, and its impacts, but were not included in the agreement made by the Land Board.

SENATOR RICK LAIBLE addressed **Joe Lamsen**, inquiring about the basics of the Agreement. **Lamsen** answered that it was a mild general agreement. The Governor, the Land Board, the Tribes, and the community all had input. It covered such things as:

1. Potential workforce issues between the Crow, the Northern Cheyenne, as well as off-reservation people.
2. It provided baseline data.
3. It insisted on education of the Crows as to Cheyenne tribal rules and customs.
4. Dealt with assessments of historical sites.
5. Issues regarding big horn sheep, and grazing rights.

SENATOR LAIBLE commented that previous legislation (SB 409) gave direction for the environmental impact assessments and statements, archeological studies, and the like. He asked **Joe Lamson** if that wouldn't suffice? Mr. Lamson answered that this resolution deals with the federal aspects. **Will Brooks**, in Senator Conrad Burns' office, had been very helpful in identifying some of those aspects.

SENATOR MCGEE questioned **David Milligan** about the cost. He wondered how much money they were talking about? \$6M per year for 10 years, for a total of \$60 million from the federal share of the royalties from the development of the tracts? No

development, no impact? What impacts on the reservation? **Milligan** answered that the impacts would be from the coal mine, the coal development, the power plant. There also would be social impacts - construction workers, transient workers, pipeline workers and alcoholism costs. There would be impacts to BIA roads, fire response services, emergency medical services.

SENATOR BEA MCCARTHY asked **Milligan** if there wouldn't be positive impact because of the employment opportunities? He answered that not many tribal workers were hired for the development at Colstrip.

SENATOR AUBYN CURTISS asked **Leo Berry, Jr., lobbyist for Burlington Northern/Santa Fe**, who was seated in the audience if the coal board was no longer functioning? **Berry** answered in the affirmative. He said that they took applications for impacts. She asked further why the counties and the coal board were not involved in this issue. He answered that he did not know.

Closing by Sponsor:

Representative Small-Eastman told the committee, "We need to get prepared for development. We need training for infrastructure work, for mine work, even for office work. We need cooperative law enforcement. The State is gearing up for this development. They can't do cultural and archeological assessments without knowing what is important to the tribes and their history."

"Senate Bill 409 says they can apply for bonding for these projects," she said. "this does not conflict with that. There are other contingencies."

She concluded her presentation, saying, "we legislators represent the Land Board as part of our job. This joint resolution is a letter to the federal government urging them to get off the dime. A promise is a promise. We need the jobs and the work."

The Hearing on HJR 45 was adjourned.

EXECUTIVE ACTION ON HJR 45

Motion:

SENATOR LAIBLE moved that HJR 45 be indefinitely postponed.

SENATOR TOOLE made a substitute motion that HJR 45 be concurred in.

Discussion:

SENATOR PERRY asked about Line 25-26 on Page 2 of the resolution. He wondered if the agreement was dependent on the development of the coal? No one knew the answer.

SENATOR ELLINGSON stated that the tribe gave up their lawsuit with the federal government for certain promises.

SENATOR PERRY said if they could strike Lines 20-23 on Page 1 because they are inaccurate, and Lines 18-19 on Page 2, which are also inaccurate, and then say that this settlement WAS dependent on the coal being developed, then perhaps he could support the resolution.

SENATOR TOOLE stated that many joint resolutions are not necessarily accurate, but they get supported anyway, and the important point was that promises made are promises owed.

SENATOR MCGEE said they (Legislature) didn't make those promises; the Land Board did, so if the Land Board wants to keep their promise, and write a letter to the congressional delegation, let them have at it. He opposed the motion.

SENATOR LAIBLE reminded the committee that it was the 88th day and the 11th hour, and that this joint resolution was premature. The legislature has no way of acknowledging this agreement.

SENATOR TOOLE closed on his motion, urging the committee to pass the resolution.

Substitute Motion/Vote: On SEN. TOOLE's substitute motion that HJR 45 BE CONCURRED IN, the motion failed 8-4, with ELLINGSON, ROUSH, SHEA and TOOLE voting yes.

Motion/Vote: SEN. LAIBLE moved that HJR 45 BE INDEFINITELY POSTPONED. Motion carried 8-4 with ELLINGSON, ROUSH, SHEA, and TOOLE voting no.

Senator Tash adjourned the meeting at 3:30 PM

ADJOURNMENT

Adjournment: 3:30 P.M.

SEN. BILL TASH, Chairman

Rosana Skelton, Secretary

BT/rs